

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

HOLLISTER CONSTRUCTION
SERVICES, LLC,

Debtor.

Case No.: 19-27439

Chapter 11

Hon. Michael B. Kaplan, U.S.B.J.

**LIMITED OBJECTION AND RESERVATION OF RIGHTS BY
DESESA ENGINEERING COMPANY, INC. TO DEBTOR'S
MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS: (A)
AUTHORIZING USE OF CASH COLLATERAL; (B) GRANTING
ADEQUATE PROTECTION; (C) SCHEDULING A FINAL
HEARING; AND (D) GRANTING RELATED RELIEF**

DeSesa Engineering Company, Inc. ("DeSesa"), by and through its counsel, O'Toole Scrivo, LLC, hereby submits an objection and reservation of rights (the "Objection") to the motion of Hollister Construction Services, LLC (the "Debtor") for entry of orders: (a) authorizing use of cash collateral; (b) granting adequate protection; (c) scheduling a final hearing; and (d) granting related relief. In support of its Objection, DeSesa respectfully submits as follows:

BACKGROUND

A. THE PARTIES AND PROJECTS

1. Upon information and belief, Debtor is a limited liability company authorized to do business in the State of New Jersey.
2. DeSesa is a corporation authorized to do business in the State of New Jersey.
3. DeSesa supplies and installs heating, ventilation and air conditioning units and materials.

4. Upon information and belief, Debtor entered into a contract with Uncommon Schools North Star Academy (the “North Star Contract”) in connection with a project known as “North Star Academy School” (the “North Star Project”).

5. Upon information and belief, Debtor entered into a contract with Superflex Ltd. (the “Superflex Contract”) in connection with a project known as “Superflex Elizabeth” (the “Superflex Project”).

6. On or about August 21, 2017, Debtor executed a subcontract with DeSesa bearing subcontract number SC-16359-08 (the “North Star Subcontract”), wherein DeSesa agreed to perform certain heating, ventilation and air conditioning work on behalf of Debtor in connection with the North Star Project.

7. On or about April 3, 2018, Debtor executed a subcontract with DeSesa bearing subcontract number SC-17223-004 (the “Superflex Subcontract”), wherein DeSesa agreed to perform certain heating, ventilation and air conditioning work on behalf of Debtor in connection with the Superflex Project.

8. DeSesa fully and faithfully performed its work under the North Star Subcontract and the Superflex Subcontract (collectively, the “Subcontracts”).

9. DeSesa is owed a significant sum of money, including retainage, for work performed pursuant to the Subcontracts.

10. DeSesa contacted representatives of Debtor regarding supplying information related to the North Star Project and the Superflex Project including, but not limited to, supplying the North Star Contract and the Superflex Contract.

11. Despite inquiry from DeSesa, neither the North Star Contract nor the Superflex Contract have been provided to DeSesa.

B. THE BANKRUPTCY

12. On September 11, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief with this Court pursuant to Chapter 11 of the Bankruptcy Code.

13. On the Petition Date, the Debtor filed several first day motions including, but not limited to, the motion (the “Motion”) for entry of orders: (a) authorizing use of cash collateral; (b) granting adequate protection; (c) scheduling a final hearing; and (d) granting related relief. See Doc. 14.

14. Since the Petition Date, the Debtor has been operating as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

C. THE INTERIM CASH COLLATERAL ORDERS

15. By order dated September 16, 2019, the Court entered the First Interim Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final hearing and (IV) Granting Related Relief (“First Interim CC Order”). See Doc. 90. Pursuant to the First Interim CC Order, the Debtor was permitted to use cash collateral subject to certain conditions.

16. By order dated September 25, 2019, the Court entered the Second Interim Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final hearing and (IV) Granting Related Relief (“Second Interim CC Order”). See Doc. 158. Pursuant to the Second Interim CC Order, the Debtor was permitted to use cash collateral subject to certain conditions.

17. A hearing on further use of the cash collateral by the Debtor is scheduled for October 8, 2019, at 11:30 a.m.

LIMITED OBJECTION

18. DeSesa objects to the Motion and Debtor's request for use of the cash collateral as it ignores certain trust funds on Non Bonded Project.

19. Upon information and belief, the funds being held by the owners of the North Star Project and/or the Superflex Project may be trust funds because the North Star Contract and/or the Superflex Contract may require that certain funds be held in trust by Debtor for the benefit of the Debtor's subcontractors. If the funds are trust funds then they are not property of the estate and should be afforded appropriate protection.

20. As such, certain trusts funds may be at risk or already have been improperly diverted from intended trust beneficiaries.

21. To the extent any owner pays the Debtor for work performed by DeSesa, including retainage, DeSesa expressly preserves all rights in those funds.

22. Additionally, several parties have filed objections to the Motion, and DeSesa joins in all such objections filed to the Motion.

RESERVATION OF RIGHTS

23. DeSesa expressly reserves any and all of its rights and remedies with respect to the North Star Project, North Star Contract, North Star Subcontract, Superflex Project, Superflex Contract, and Superflex Subcontract.

WHEREFORE, DeSesa respectfully requests that this Court deny further use of cash collateral unless absent modification of the operative Interim Order.

O'TOOLE SCRIVO, LLC
Attorneys for DeSesa Engineering Company, Inc.

Dated: October 2, 2019

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